

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

May 24, 2001

ORDER AUTHORIZING  
AMENDMENTS TO  
ENTITLEMENT  
AGREEMENTS AND  
GRANTING WAIVER

CENTRAL MAINE POWER COMPANY  
Selection of Winning Bidders for Sale of  
Electric Capacity and Energy Pursuant to  
35-A M.R.S.A. § 3204(4) and Chapter 307  
of the Commission's Rules and Regulations

Docket No. 99-764

MAINE PUBLIC UTILITIES COMMISSION  
Standard Offer Bidding Procedure

Docket No. 99-111

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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**I. SUMMARY**

Through this Order, we authorize Central Maine Power Company (CMP) to amend its Entitlement Agreements with Engage Energy America LLC (Engage) as part of a comprehensive settlement of a contract dispute between Energy Atlantic, LLC (EA), the standard offer provider for CMP's residential and small non-residential class, and Engage, EA's wholesale supplier. The contract dispute threatened the sustainability of the current \$0.04089/kWh standard offer price for the small class, potentially exposing CMP customers to cost increases for the standard offer period ending February 28, 2002 in the range of \$100 to \$150 million. The comprehensive settlement, among other things, provides assurance that the \$0.04089/kWh standard offer price will be maintained through the remainder of the standard offer term (February 28, 2002). As part of the terms of settlement, Engage will be permitted to reduce its payments for CMP's Entitlements by \$4.5 million in the form of an offset to Engage's last payment for the Entitlements. CMP will be permitted to recover this amount from ratepayers as a reduction in the Asset Sale Gain Account. EA and Frontier Insurance Company (Frontier) will also make payments to Engage to settle the matter in the amounts of \$2.5 million and \$1 million, respectively. Finally, we grant EA a waiver of the financial capability requirement in our standard offer rule (Chapter 301), because the terms of settlement provide alternative security of equivalent value.

**II. BACKGROUND**

During the Fall of 1999, the Commission, pursuant to 35-A M.R.S.A. § 3212 and Chapter 301 of its rules, conducted its first bid process to choose standard offer providers for those customers throughout the State that do not choose a competitive

provider. At approximately the same time, CMP was conducting a bid process to sell the Entitlements to energy and capacity from its undivested generation assets and contracts, as required by 35-A M.R.S.A. § 3204(4) and Chapter 307 of the Commission's rules. During the course of bidding, the Commission received a bid from EA to provide standard offer service to CMP's small class for either a 1- or 2-year period at \$0.04089/kWh. This bid was made contingent upon acceptance of a companion proposal made by Engage's predecessor in interest (Engage Energy US, L.P.) to purchase the CMP Entitlements. In an Order issued December 3, 1999, the Commission accepted EA's 2-year bid. *Order Designating Standard Offer Provider and Rejecting Certain Bids*, Docket No. 99-111 (Dec. 3, 1999). On the same day, the Commission issued an Order in Docket No. 99-764 directing CMP to execute Entitlement Agreements with Engage, consistent with the EA/Engage combined proposal. *Order*, Docket No. 99-764 (Dec. 3, 1999). On December 9, 1999, EA and Engage executed a Wholesale Power Sales Agreement, which with its Addendum and amendments (collectively, Wholesale Agreement) governs the terms under which Engage would sell to EA the power necessary to fulfill EA's obligation as the standard offer provider.

In February, 2001, the Commission was informed of the existence of a contract dispute between EA and Engage regarding their Wholesale Agreement. This dispute threatened to disrupt the Wholesale Agreement and thus the power supply that enables EA to provide standard offer service at the \$0.04089/kWh rate. The Commission carefully examined the merits of the contract dispute and analyzed potential outcomes and their cost consequences for CMP ratepayers if the matter went to litigation. This analysis indicated that, under certain scenarios, ratepayers would be exposed to substantial increases in electricity costs, primarily because current market prices for electricity are approximately double the existing standard offer rate. Any disruption in EA's wholesale supply, therefore, would likely render it unable to continue to provide standard offer at the \$0.04089/kWh price. Additionally, neither the Commission nor CMP could acquire supply at a price that would enable it to maintain the current standard offer rate. The problem is exacerbated by arguable contractual uncertainty concerning the sale of CMP entitlements to Engage. Under one construction of the various contracts, EA would be unable to continue to provide standard offer service (as a result of a termination of its Wholesale Agreement with Engage), while Engage would maintain its right to purchase the CMP Entitlements. Under this construction, the increase in cost to ratepayers for standard offer service through the remainder of the current term (February 28, 2002) could be in the range of \$100 to \$150 million.<sup>1</sup>

Because of the potential for substantial harm to ratepayers, the Commission agreed to have its staff participate in discussions to resolve the matter. These

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<sup>1</sup> Pursuant to Commission rules, EA did provide a bond issued by Frontier to secure its standard offer obligations; however, the bond is in an amount of approximately \$33 million, which is inadequate to cover the cost of replacement standard offer power.

discussions included representatives of EA, Engage and Frontier. Additionally, the Public Advocate was briefed on a regular basis as to the nature and substance of the discussions.

The discussions have produced a settlement among the parties that resolves all matters under dispute. The settlement consists of amendments to the Wholesale Agreement, amendments to the Entitlement Agreements, and various releases among the parties. The settlement involves concessions by all affected parties, including CMP's ratepayers. The primary provisions of the settlement are as follows:

- EA will continue to provide standard offer service for the remainder of the term at the current price of \$0.04089/kWh;
- Engage will continue to provide wholesale supply to EA for standard offer service for the remainder of the term at the previously agreed upon price;
- The Wholesale Agreement between EA and Engage will be amended to provide assurance that any future contract disputes will not jeopardize EA's continued provision of standard offer service at \$0.04089/kWh;
- Engage will receive value totaling \$8 million (\$4.5 million from CMP, \$2.5 million from EA, and \$1 million from Frontier);
- In the event EA ceases to be the standard offer provider, Engage will provide wholesale standard offer supply to CMP on the same terms as it currently does to EA;<sup>2</sup>
- The power from CMP's Entitlements will be linked to the provision of standard offer service for the remainder of the term regardless of future contract disputes;
- Frontier will be released from future obligations to secure EA's performance as standard offer provider; and

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<sup>2</sup> The only circumstance in which Engage would be relieved from its obligation to provide wholesale standard offer supply is in the unlikely event that the Commission designates a replacement retail provider other than CMP. Regardless of the identity of the replacement retail provider, we would require the replacement provider to distribute to EA certain amounts EA would have received if the Wholesale Agreement had been fully implemented. EA's continued receipt of such distributions is an integral part of the settlement in that it is necessary for EA to fulfill its payment obligations under the settlement.

- Engage will provide a corporate guarantee of approximately \$33 million to secure its obligations to provide wholesale supply for standard offer service.

The Public Advocate has indicated his general support for the settlement as a reasonable resolution of the difficult issues raised by the contract dispute.

Because the settlement involves a ratepayer contribution through a reduction in Engage's payments for CMP's Entitlements, we reopen Docket No. 99-764 as a vehicle to allow us to review the settlement to determine whether it is reasonable under the circumstances and in the public interest. We also reopen Docket No. 99-111 to consider a waiver of EA's security requirement under our standard offer rule (Chapter 301).

### **III. DISCUSSION AND DECISION**

As stated above, the contract dispute between EA and Engage has the potential to result in substantial ratepayer harm. The harm could be as great as \$100 to \$150 million under current market conditions. The ratepayer contribution of \$4.5 million under the settlement serves to maintain the extremely attractive current standard offer rate through the remainder of the term and avoids the risk of \$100 to \$150 million in additional supply costs. The ratepayer contribution will be in the form of an offset to Engage's final payment for the Entitlements; this represents an approximate 2.3% reduction in the total payments Engage would otherwise have made for the Entitlements. Based on our assessment of the magnitude and probability of ratepayer harm, we conclude that a reduction in Entitlement payments of \$4.5 million is a reasonable accommodation under the circumstances and that the settlement in general is in the public interest. This conclusion is based in part on our view that it would be extremely unlikely that this matter could be settled in a manner that protects ratepayer interests without a ratepayer contribution of the magnitude approved in this Order.

Accordingly, we authorize CMP to amend its Entitlement Agreements with Engage to provide for a \$4.5 million offset to the last payment from Engage to CMP and to make other changes consistent with the settlement. CMP may recover the reduced payment through an adjustment to its Asset Sale Gain Account.

The settlement releases Frontier from any further obligations to secure EA's provision of standard offer service. Section 3(A)(2) of Chapter 301 requires standard offer providers to secure their performance through a bond, letter of credit or corporate guarantee. However, the settlement requires Engage to provide a corporate guarantee from its parent company, Westcoast Energy, Inc., that complies in all material respects with the requirements of our rule, including the required amount of security (\$32,915,000). Section 10 of Chapter 301 allows the Commission to waive, where good cause exists, any requirements of the rule, provided that such action would not be inconsistent with the purposes of the Chapter. We conclude that the corporate guarantee to be provided by Engage under the terms of the settlement will provide

security equivalent to that required by our rule and, therefore, good cause exists to waive the requirement of Chapter 301(3)(A)(2) that EA provide security in connection with its provision of standard offer service.

To conclude, we find that the settlement provides a fair resolution of a complicated set of contractual issues that could have resulted in substantial and costly litigation, and jeopardized the extremely attractive standard offer price that now exists for CMP's residential and small non-residential customers. Accordingly, we consider the settlement to be in the public interest and to constitute a final resolution of the matter.<sup>3</sup>

Dated at Augusta, Maine, this 24th day of May, 2001.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
                                                         Nugent  
                                                         Diamond

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<sup>3</sup> We will, therefore, not take any action or commence any proceeding with respect to past conduct related to the EA/Engage contract dispute.

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.